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No. 551

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

JIM DEVRIES, ELECTRICAL WORKERS LOCAL NO. 426 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, O. E. ROOT, AS PRESIDENT OF SAID LOCAL 426, SODAK PICKET, SINCLAIR PICKET, AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, *Petitioners*,

v.

BAUMGARTNER'S ELECTRIC CONSTRUCTION CO., *Respondent*.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioners submit herewith a brief reply to several contentions made in Respondent's Brief In Opposition.

1. Respondent "suggests" rather than asserts "that no reviewable question has been preserved or is presented by this Petition for Certiorari." This suggestion is unsound. As Respondent's brief itself points out, the second Amended Separate Answer of the International Brotherhood of Electrical Workers, particularly paragraphs II and III (pp. 32a - 34sa), unquestionably raised the basic Federal question of whether "Congress by passing said labor management relations act [National Labor Relations Act,

as amended] assumed exclusive jurisdiction and completely preempted the field of labor relations as to industries that affect interstate commerce" (App. 33a).

This question was not only raised with respect to the injunctive relief requested but with respect to the monetary damages sought as well. See paragraph III of the Second Amended Separate Answer (App. 34a) wherein petitioners asserted "that the [State] Court is without jurisdiction to award damages to the plaintiff for all the reasons and causes above cited" in paragraph II.

That a Federal question with respect to both injunctive relief and monetary damages was raised below is indisputably clear from the decision of the Supreme Court of the State of South Dakota, in which the Court specifically held, on the basis of this Court's decision in *Garner* v. *Teamsters Union*, 346 U. S. 486, that the trial court was without jurisdiction to grant injunctive relief and, also, that under this Court's decision in *United Construction Workers* v. *Laburnum Construction Corporation*, 347 U. S. 656 the trial court did have jurisdiction to impose sanctions by way of damages. Thus, the very Federal questions presented in the petition were considered by the highest court of the State of South Dakota and under such circumstances there is no basis for questioning petitioners' assertion that the Federal questions were properly raised in the State courts. See *Whitney* v. *California*, 274 U. S. 357, 360-1; *Manhattan Life Ins. Co.* v. *Cohen*, 234 U. S. 123, 134; *Whitfield* v. *Ohio*, 297 U. S. 431, 435, 436; *Charleston Federal Savings & Loan Assn.* v. *Alderson*, 324 U. S. 182, 185-6. Respondent has inexcusably ignored the decision of the court below in this respect and thus is plainly in error in asserting that there is no basis, other than the Second Amended Answer, for this Court's consideration of the questions presented in the petition. Moreover, in view of the lower court's detailed discussion of such questions, it is difficult to comprehend the basis for respondent's assertion that the petition "fails completely to give counsel or the Court notice of what is now argued" (Resp's Brief, p. 5).

In view of the foregoing, there appears to be little point to the distinction which respondent attempts to draw between the injunctive phase and the damages aspect of this case. Both the trial and appellate courts were fully aware of and accepted consideration of, petitioners' challenge of the State Court's jurisdiction with respect to both aspects of the case, as is clearly evident from the Second Amended Answer, the Motion for a Directed Verdict, the Supreme Court's decision and from the Judgment of the trial court (App. 21a-23a) which similarly disposed of both phases of the case after consideration of the findings of fact and conclusions of law proposed by petitioners.

2. There is nothing in the petition for the Writ which claims, as indicated by Respondent's brief, that Plaintiff asserted any rights under Section 303(b) of the Labor Management Relations Act, 1947. The questions presented in the petition relate solely to the issue of the jurisdiction of courts of the State of South Dakota over an action for damages such as that instituted by respondent. And, in this connection, the applicability of Section 303(b) is deemed to constitute a valid argument in support of the conclusion that state jurisdiction to award damages under state law is preempted.

Respectfully submitted,

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